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Attorney Docket No. 05725.0793.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Sandrine DECOSTER et al.

Application No.: 09/692,155

Filed: October 20, 2000

For: COSMETIC COMPOSITIONS
COMPRISING AT LEAST ONE
SILICONE COPOLYMER AND AT
LEAST ONE CONDITIONER, AND
USES THEREOF

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)
) Group Art Unit: 1617
)
) Examiner: G. Yu
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)
)
)

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

In the election requirement dated October 22, 2002, the Examiner required election of species under 35 U.S.C. § 121 of a single species of conditioner from the following list recited in claim 1:

- (A) Synthetic Oils;
- (B) Animal Oils;
- (C) Plant Oils;
- (D) Fluoro Oils;
- (E) Perfluoro Oils;
- (F) Natural Waxes, and
- (G) Synthetic Waxes.

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To be responsive to the requirement, Applicants elect, with traverse, synthetic oils. The elected species is believed to read on claims 1-85.

Applicants respectfully traverse the election of species requirement on the basis that the Examiner has failed to show that a serious burden exists to examine all of the alleged species. The M.P.E.P. § 803.02 lays out the requirements for justifying an election of species. And these requirements are explicitly clear. An examiner must show that the search and examination of a claim would impose a serious burden on the Office because it embraces an unreasonable number of species. Id. (emphasis added). This the Examiner has not shown.

The Examiner has provided no reasons or evidence on the record to substantiate her election of species requirement. Further, the Office has considered all the claimed subject matter together since October 20, 2000, without an election requirement. Such consideration significantly weakens the Examiner's position. Accordingly, Applicants respectfully request that the Office examine the full scope of the claimed invention without the election requirement.

If the Examiner, however, chooses to maintain the election of species requirement, Applicants expect the Examiner, if the elected species are found allowable, to continue to examine the full scope of the subject matter to the extent necessary to determine the patentability of claim 1. 35 U.S.C. § 121; M.P.E.P § 803.2.

Thus, in view of the foregoing remarks, Applicants respectfully request reconsideration and withdrawal of the election requirement.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

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Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 20, 2002

By: *Thalia V. Warnement*
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